

STATE OF MICHIGAN  
COURT OF APPEALS

---

SCOTT BURGOR,

Plaintiff-Appellant,

v

LISA BURGOR,

Defendant-Appellee.

---

UNPUBLISHED

January 6, 2004

No. 243120

Wayne Circuit Court

LC No. 02-218565-CH

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant are siblings. Joan Burgor, their mother, executed a quitclaim deed conveying her home to defendant. Several days later Joan Burgor died intestate. Plaintiff filed suit to set aside the deed, alleging that decedent was mentally incompetent when she executed the deed, that she executed the deed as a result of undue influence and/or duress, and that the deed was invalid because it was not delivered to defendant.

Defendant moved for summary disposition. The motion, which did not specify the ground or grounds on which it was based, was supported by statements from a physician and acquaintances of decedent who stated that decedent was of sound mind and that she intended to convey her home to defendant. Plaintiff alleged on information and belief that the signature on the deed was not that of decedent, that decedent intended to leave her home to both plaintiff and defendant, and that decedent was not of sound mind when or if she signed the deed. The trial court granted the motion, finding that no issue of fact existed.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). The trial court's reasoning suggests that defendant requested and the trial court granted summary disposition pursuant to MCR 2.116(C)(10). In reviewing the decision on a motion brought pursuant to MCR 2.116(C)(10), we review the record evidence, and all reasonable inferences drawn therefrom, and decide whether a genuine issue of material fact exists. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996). A party moving for summary disposition pursuant to MCR 2.116(C)(10) has the initial burden to support his claim by affidavits, depositions, or other

admissible documentary evidence. The burden then shifts to the nonmoving party to demonstrate that a genuine issue of fact exists. To meet this burden, the nonmoving party must present admissible documentary evidence. The motion is properly granted if this burden is not satisfied. *Willis v Deerfield Twp*, 257 Mich App 541, 550; 669 NW2d 279 (2003).

We affirm the trial court's order granting defendant's motion for summary disposition. The technical deficiencies in defendant's motion did not require denial of the motion and do not warrant reversal of the trial court's decision. Defendant's failure to specify the subrule on which she based her motion and the trial court's failure to correct the matter does not preclude our review of the trial court's decision. *Verna's Tavern, Inc v Heite*, 243 Mich App 578, 584-585; 624 NW2d 738 (2000). Defendant's motion was not accompanied by a brief as required by MCR 2.119(A)(2); however, the hearing transcript reveals that plaintiff had sufficient notice of defendant's arguments and was able to respond to them. Plaintiff has not established that he was prejudiced by defendant's failure to submit a brief in support of her motion.

Defendant's motion was supported by documentary evidence as required, and plaintiff has not established that that evidence was not substantively admissible. MCR 2.116(G)(6); MRE 803(3). Plaintiff failed to submit any affidavits or other documentary evidence in opposition to the motion. The trial court properly granted defendant's motion under the circumstances. *Willis*, *supra*.

As a general rule it is inappropriate for a trial court to grant summary disposition before the parties complete discovery, but summary disposition is not premature if there is no fair chance that further discovery would allow the nonmoving party to present sufficient support for its allegations. *CMI Int'l, Inc v Internet Int'l Corp*, 251 Mich App 125, 134-135; 649 NW2d 808 (2002). Plaintiff presented merely conclusory allegations to support his assertion that genuine issues of fact existed. These allegations were not sufficient to defeat the motion. *Id.*; *Willis*, *supra*.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Richard Allen Griffin  
/s/ Kathleen Jansen